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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,794	02/13/2002	Walter Brandenburger	22750/536	9150
26646	7590	02/25/2004	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			CULBRETH, ERIC D	
		ART UNIT	PAPER NUMBER	
		3616		

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/075,794

Applicant(s)

BRANDENBURGER, WALTER

Examiner

Eric D Culbreth

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 December 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 11-30 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 11-30 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 December 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Drawings

1. Page 8 of the amendment filed 12/22/03 states that replacement drawing sheets of Figures 1-3 have been filed. However, no replacement sheets have been found in the file (replacement drawing sheets should be clearly labeled “Replacement Drawing Sheet”). What were found at the end of the amendment were drawings marked with red pen showing proposed changes. These drawings changes were approved, but it is noted that the changes approved have already been made in the drawings filed originally with the application (i.e., the margins in the original drawings are already in the English language, not German).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 11-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. In claim 11, line 7 there is no antecedent basis in the claim for “the pressure line to annular spaces” (pressure lines were previously recited, but there was no previous recitation in the claim of a pressure line to the annular spaces).

b. In claim 11, line 9 there is no antecedent basis for “the piston spaces”.

c. The recitation of cylinders in claim 11, line 10 is a double inclusion of the cylinders earlier recited in the claim (“the” should be inserted before “cylinders” in line 10).

d. Claim 14 was rejected under 35 USC 112 second paragraph in the first Office Action because it was an article claim but depended from a method claim (claim 11). This is still true (claim 14 still recites a device in the preamble but depends from method claim 11). In order to obviate the rejection, it might be best to rewrite claim 14 as an independent claim drawn to a device but including all the structure of claim 11. Note MPEP 2173.05(p)II (“PRODUCT AND PROCESS IN THE SAME CLAIM”, which states that a single claim which claims both an apparatus and the method steps of using the apparatus is indefinite.

e. Also in claim 14, there are still limitations with no antecedent basis (“the hydropneumatic suspension device for vehicles having variable load conditions” in claim 14, lines 2-3 (in claim 11, the device was not recited as having variable load conditions)) and limitations having double inclusions (“cylinders” in line 3 of claim 14 is a double inclusion of the cylinders already recited in claim 11). Whether claim 14 is rewritten as a dependent or independent claim, care should be taken to ensure that lack of antecedent basis and double inclusion is eliminated.

f. In claim 11, it is not clear what is meant by “a predefined ratio” near the end of the claim (there is no disclosure of a predefined ratio in the specification). Noting applicant’s remarks, any term or phrase should have clear antecedent basis in the specification (note 37 CFR 1.75(a)), and it is not clear from the specification or drawings what the predefined ratio is (a ratio of what to what).

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g. Upon reconsideration and in view of text search of the prior art, the term “double reversal” in claim 15 is deemed understandable in the art. No further action is necessary for claim 15 on applicant’s part.

h. In claim 28, line 3 “60” should apparently be “63”.

Allowable Subject Matter

4. Claim 11 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

5. Claims 12-30 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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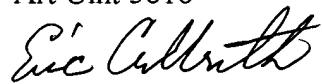
CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric D Culbreth whose telephone number is 703/308-0360. The examiner can normally be reached on Monday-Thursday, 9:30-7:00 alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 703-308-2089. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Eric D Culbreth
Primary Examiner
Art Unit 3616



cc